

**PHYSICAL THERAPY BOARD OF CALIFORNIA
INITIAL STATEMENT OF REASONS**

Hearing Date: November 7, 2003

Subject Matter of Proposed Regulations: Issuance of Initial Probationary License

(1) Section(s) Affected: 1399.16

PROBLEM ADDRESSED: Section 1398.4 of the California Code of Regulations delegates to the executive officer, or in his or her absence the president and vice-president, all functions necessary to the dispatch of business of the Board in connection with investigative and administrative proceedings under the jurisdiction of the board, except for those powers reserved exclusively to the “agency itself” under the Administrative Procedures Act. While the intent of the statute (section 2660.2 of the Business and Professions Code) was for the executive officer to continue to make the initial licensure decision, Section 2660.2 of the Business and Professions Code states the Board may in its sole discretion issue a probationary license to any applicant for licensure who is guilty of unprofessional conduct but who has met all other requirements for licensure. Currently there are no provisions to allow applicants to receive a license without going through the administrative procedure; however, section 2660.2 of the Business and Professions Code will allow an applicant to receive a license and not be delayed due to the lengthy administrative process.

The use of the phrase “the Board in its sole discretion” could raise an issue as to whether the Board members must approve all initial probationary licenses. Approval by the Board members of the initial probationary license would be in conflict if the probationary license were appealed and the Board members had to make a decision on an administrative law judge’s Proposed Decision.

Further, section 2660.2 provides when an initial probationary license may be issued and specifies some possible restrictions, but does not place any limitation on restrictions or guidelines such as the length of probation. Applicants will be provided with additional knowledge of what restrictions may be placed on a license by including a reference to the Board’s Disciplinary Guidelines (section 1399.15) in the proposed regulation.

SPECIFIC PURPOSE: To clarify the intent of section 2660.2 by delegating to the executive officer the authority to issue an initial probationary license and to require the use of the Board’s Disciplinary Guidelines as a guideline for the issuance of an initial probationary license.

FACTUAL BASIS: This section establishes who has the authority to issue an initial probationary license and what guidelines are to be used.

UNDERLYING DATA: Existing laws B&P Code section 2660.2, and CCR Sections 1399.15 and 1398.4 establishes the Board’s authority to issue initial probationary licenses, utilize existing disciplinary guidelines and delegate to its executive officer the authority to perform all functions necessary to dispatch business of the board in conjunction with those investigative and administrative proceedings under the jurisdiction of the board.